

Senate Bill No. 447

CHAPTER 110

An act to amend Sections 1800, 1800.5, 1801, and 1801.5 of the Welfare and Institutions Code, relating to juvenile offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 2005. Filed with
Secretary of State July 21, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 447, Poochigian. Youth authority.

Existing law requires the Director of the Youth Authority to request the prosecuting attorney to petition the committing court for an order seeking the extended detention of certain persons who would otherwise be discharged from the Youth Authority if the Department of the Youth Authority determines that those persons would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality.

This bill would limit the application of those sections to persons who are physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality which causes them to have serious difficulty controlling their dangerous behavior.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. Whenever the Department of the Youth Authority determines that the discharge of a person from the control of the department at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior, the department, through its director, shall request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the authority beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge from control of the department at the time stated would be physically dangerous to the public, but the petition may not be dismissed

and an order may not be denied merely because of technical defects in the application.

The prosecuting attorney shall promptly notify the Department of the Youth Authority of a decision not to file a petition.

SEC. 2. Section 1800.5 of the Welfare and Institutions Code is amended to read:

1800.5. Notwithstanding any other provision of law, the Youth Authority Board may request the Director of the Youth Authority to review any case where the department has not made a request to the prosecuting attorney pursuant to Section 1800 and the board finds that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior. Upon the board's request, a mental health professional designated by the director shall review the case and thereafter may affirm the finding or order additional assessment of the ward. If, after review, the mental health designee affirms the initial finding, concludes that a subsequent assessment does not demonstrate that a ward is subject to extended detention pursuant to Section 1800, or fails to respond to a request from the board within the timeframe mandated by this section, the board thereafter may request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the authority pursuant to Section 1800 if the board continues to find that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior. The board's request to the prosecuting attorney shall be accompanied by a copy of the ward's file and any documentation upon which the board bases its opinion, and shall include any documentation of the department's review and recommendations made pursuant to this section. Any request for review pursuant to this section shall be submitted to the director not less than 120 days before the date of final discharge, and the review shall be completed and transmitted to the board not more than 15 days after the request has been received.

SEC. 3. Section 1801 of the Welfare and Institutions Code is amended to read:

1801. (a) If a petition is filed with the court for an order as provided in Section 1800 and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross-examine experts or other witnesses upon whose information, opinion, or testimony the petition is based. The court shall inform the person named in the petition of his or her

right of process to compel attendance of relevant witnesses and the production of relevant evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

SEC. 4. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, as soon as possible, the constitutional validity of future commitments made pursuant to these provisions, it is necessary that this act take effect immediately.